

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ERIC D. SMITH,  
*Plaintiff,*

v.

JENNIFER SMITH and  
DAPHNE TESTER,  
*Defendants.*

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1:10-cv-00256-JMS-MJD

**ORDER ADOPTING REPORT AND RECOMMENDATION**

**on**

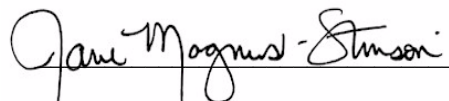
**Plaintiff's Objection and Motion to Strike [dkt. 121] and**  
**Plaintiff's Motion For Judgment As A Matter of Law [dkt. 122]**

No objections having been filed thereto, the Magistrate Judge's Report and Recommendation [dkt. 125] on the issue of exhaustion is hereby adopted as the decision and Entry of the Court. The Defendants have failed to meet their burden of establishing that Mr. Smith failed to exhaust, and such affirmative defense is stricken.

The Court further adopts the Magistrate Judge's Recommendation as to *Plaintiff's Objection and Motion to Strike Defendant's Witness Mike Smith As a Witness [dkt. 121]* and *Plaintiff's Motion for Judgment As a Matter of Law [dkt 122]*, such that motions are **DENIED as moot.**

**SO ORDERED.**

11/08/2012



Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

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